

DISCLAIMER

This electronic version of an SCC order is for informational purposes only and is not an official document of the Commission. An official copy may be obtained from the [Clerk of the Commission, Document Control Center](#).

APPLICATION OF

APPALACHIAN POWER COMPANY

CASE NO. PUE970766

**For certificates of public convenience
and necessity authorizing transmission lines
in the Counties of Bland, Botetourt, Craig,
Giles, Montgomery, Roanoke and Tazewell:
Wyoming-Cloverdale 765 kV Transmission
Line and Cloverdale 500 kV Bus Extension**

HEARING EXAMINER'S RULING

May 22, 1998

On May 8, 1998, the Board of Supervisors of Giles County, Virginia, Citizens Organized for the Preservation of the Environment of Giles County, Citizens for the Preservation of Craig County, and the Roanoke County Preservation League (collectively, "Giles County") filed a Motion to Extend Filing Schedule. Giles County argues, among other things, that the Company has failed to respond to fifty-four interrogatories which are critical to the preparation of its prefiled testimony. Giles County requests a sixty-day extension of their May 26, 1998, filing deadline.

On May 11, 1998, the Board of Supervisors of Bland County, the Board of Supervisors of Tazewell County, Alliance for the Preservation and Protection of Appalachian Land, Inc., and Citizens United to Protect Tazewell County, Inc. (collectively, "Bland County") filed a Motion to Extend Filing Schedule, requesting a ninety-day extension of the procedural schedule. In support of its motion, Bland County states that it has encountered difficulties in the selection and retention of witnesses and preparation of testimony to meet the current May 26, 1998, filing deadline.

Also on May 11, 1998, Bland County filed a Motion to Dismiss Application or To Indefinitely Suspend Proceedings. In support of this motion, Bland County alleges that it was not afforded the same protection afforded interested parties in Appalachian Power Company's (the "Company") prior application, Case No. PUE910050. Specifically, Bland County claims that the Counties of Bland and Tazewell have been prejudiced because the Company did not conduct public information workshops as it did in Roanoke, Botetourt, Craig and Giles Counties in conjunction with its prior application.

On May 19, 1998, the Greater Newport Rural Historic District Committee ("Newport"), by counsel, filed its own Motion to Dismiss Application or to Indefinitely

Suspend Proceedings, also citing the Company's decision not to hold public information workshops.

By Ruling dated May 13, 1998, Staff and the parties were given until May 20, 1998, to respond to Protestants' ¹ Motions. Responses were filed by the Company, Staff, Newport, Giles County, the Montgomery County Board of Supervisors ("Montgomery County") and Deborah Dull.

The Company, in its responses, urges denial of all motions. With regard to the Giles County Motion to Extend the Filing Schedule, the Company asserts that it has responded in a timely manner to each of Protestants' 187 interrogatories and requests for production of documents. Although some of its responses consisted of an objection or a partial objection, the Company maintains that, in each case, the objection was fully justified under the discovery rules. (Response at 2).

In response to the motion of Bland County for an extension of the filing schedule, the Company points out that Protestants have had nearly six months notice of the May 26, 1998, filing deadline. The Company asserts that, other than filing one set of interrogatories consisting of one question, Bland County has apparently done nothing to prepare its case. The Company contends that Bland County's lack of diligence should not constitute grounds for an extension. (Response at 2).

In response to the Motion to Dismiss or Suspend the Application, the Company argues that § 56-46.1 of the Code of Virginia does not require public workshops and telephone surveys for two reasons. First, the application in Case No. PUE910050 was withdrawn and this is a different proceeding. Second, the statute (§ 56-46.1) relates to the formal public notice required and not to informal and extra-procedural contacts between the applicant and the public. In conclusion, the Company maintains that all requirements of § 56-46.1, including the notice requirements, have been satisfied.

Giles County filed a joint motion in support of the Motion to Suspend Filing Deadline and the Motion to Dismiss or Suspend. In its response, Giles County argues that the Company's failure to contact or arrange to hear comments from residents of Giles County was a clear violation of the Commission's Interim Order in Case No. PUE910050, ² Section 56-46.1 of the Code of Virginia, and Constitutional standards of administrative due process. Giles County argues that landowners impacted by the routes proposed in the Company's current application are damaged in a manner that subsequent participation in the process will not correct. Further, Giles County claims that its residents were not afforded the opportunity to examine the same type of maps that the residents of the other

¹ All Protestant groups will collectively be referred to as "Protestants."

²In directing the Company to study possible mitigation of environmental impact to the Carvin Cove Reservoir and the Sinking Creek Valley, the Commission noted that a significant deviation in the route would require additional notice and that interested parties in a newly affected area must be afforded the same protection as those parties affected by the route described in the original notice. (Interim Order at 18, 19 (December 13, 1995)).

counties were permitted to examine in the Company's previous case, Case No. PUE910050. (Response at 10).

Newport, by counsel, also argues that the Company's failure to obtain public comment directly from the residents of Bland and Tazewell Counties constitutes a violation of due process. Newport further contends that the Company's failure to hold local workshops as it did in its previous case has caused irreparable harm by denying citizens the opportunity to influence the Company's routing decisions. (Response at 3).

Staff urges denial of Protestants' Motions to Dismiss on the grounds that the requirements set forth in § 56-46.1 of the Code of Virginia have been satisfied by the Company in this proceeding. Staff notes that linkage of the Company's prior application, Case No. PUE910050, with the current case is improper because the prior application has been dismissed. Staff takes no position on Protestants' Motion to Extend filing Deadline.

Deborah Dull, in support of the Motion to Dismiss or Suspend, adopts all the reasons stated by Protestants and further states that, as a Giles County resident who owns land under the preferred corridor, she was denied due process because she was not afforded the same protection as other interested parties. Specifically, she cites the failure of the Company to conduct local workshops as it did pursuant to its application in Case No. PUE910050. Citing the reasons stated by Protestants in their Motion to Extend Filing Deadline, Ms. Dull supports a 90-day extension of the deadline for filing Protestants' testimony and exhibits.

Montgomery County supports the Motion to Dismiss or Suspend Proceedings because of the Company's decision not to hold local workshops in conjunction with this application. Citing the procedural due process mandated by § 56-46.1 of the Code of Virginia, Montgomery County respectfully moves that the application be dismissed and that the citizens of Montgomery County be afforded the same due process, equal protection of the law, and opportunity to be heard afforded the residents of counties affected by the Company's prior application (Case No. PUE910050).

I find that the Motions to Dismiss should be denied for the following reasons. First, § 56-46.1 of the Code of Virginia does not require the Company to hold local workshops. The only requirement is to publish notice and give written notice to the governing body of each such county and municipality affected. Second, the routes in question are the same routes noticed and applied for in the Company's current application. There being no deviation from the routes applied for, significant or otherwise, no additional notice is required. Third, the present case is a separate case from the Company's previous application. Local workshops were held in communities affected by the Company's previous application, Case No. PUE910050. However, no local workshops were held by the Company in communities affected by the current application, Case No. PUE970766. In both cases, affected communities were treated the same. Therefore, all interested parties to this proceeding have been afforded equal protection. Inasmuch as Newport's motion is based on the same arguments, it also is denied.

I further find that the Motions to Extend the Filing Deadline should be granted pending oral argument on the procedural schedule and any other matters pertaining to this application. In this regard, oral argument is hereby set for Friday, June 12, 1998, at 1:00 p.m. in a Commission courtroom. Accordingly,

IT IS DIRECTED that:

1. The Protestants' Motions to Dismiss Application or Suspend Proceedings are ***DENIED***;

2. Protestants' Motion to Extend Protestants' Filing Deadline is ***GRANTED***, pending further ruling of this Hearing Examiner. In the interim, all Protestants are to diligently pursue preparation of their testimony and exhibits;

3. The May 26, 1998, filing deadline for Protests and public comments shall remain as currently scheduled; and

4. Oral argument on the procedural schedule and any other matter pertaining to this application is to be held at 1:00 p.m. on June 12, 1998, in a Commission courtroom.

Howard P. Anderson, Jr.
Hearing Examiner